IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Revision No. 432 of 1993
Date of Decision: 16.7.2007

Tirath Ram.

..... Petitioner through
Shri R.N.Moudgil,Advocate

Versus

State of Punjab.

..... Respondent through
Shri Mehardeep Singh,
Assistant Advocate General,
Punjab.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

Mahesh Grover,J.

This revision petition is directed against judgment dated 8.7.1993 of the Additional Sessions Judge, Gurdaspur whereby the appeal filed by the petitioner against the judgment and order of sentence dated 23.12.1991 rendered by the Sub Divisional Judicial Magistrate, Pathankot convicting and sentencing him for an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act,1954 (for short, `the Act') to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment thereof, to further undergo rigorous imprisonment for three

months, was dismissed.

On 21.12.1989, the shop of the petitioner situated at village Kathlaur was raided by the Food Inspector – Dr.Ravi Kumar Dogra accompanied by DrS.S.Bhindar, District Health Officer. After disclosing their identity to the petitioner and after expressing the intention to purchase a sample of mustard oil, 375 grams thereof was purchased for an amount of Rs.7.90 from a tin of mustard oil meant for public sale and human consumption.

On analysis, the contents of the sample of mustard oil were found "hazy with sediments settled at the bottom whereas mustard oil should be clear and free from suspended or foreign matter."

Accordingly, the prosecution proceedings were launched against the petitioner and a complaint preferred seeking his conviction for having violated the provisions of Section 7 read with Section 16 of the Act.

After appraisal of the evidence led before it, the trial Court found the petitioner guilty of the offence alleged against him. Consequently, he was convicted and sentenced in the manner noticed hereinabove.

In appeal, the Additional Sessions Judge did not find any infirmity in the judgment and order of sentence passed by the trial Court and upheld the same.

Hence, the petitioner is in revision petition before this Court.

The first contention raised by the learned counsel for the petitioner is that under the provisions of Section 16-A of the Act, the trial Court has to try the case summarily and not by following the procedure prescribed for a warrant's case as has been done in the instant case and,

therefore, the entire proceedings stand vitiated. In support of his contention, he placed reliance on Sikander versus State of Haryana, 1992(3) R.C.R. (Criminal) 505.

The next contention of the learned counsel for the petitioner is that no independent witness had been examined and even though, it was stated that Dr.S.S.Bhindar was accompanying the Food Inspector and an independent witness enjoined, yet, they were not produced as witnesses.

The last contention raised by the learned counsel for the petitioner is that affidavit Ex.PK filed by the official of the office of Local Health Authority, Gurdapsur, who had received the samples, was not verified in accordance with law and, hence, the crucial link evidence was rendered untrustworthy.

The aforesaid contentions of the learned counsel for the petitioner were refuted by the learned counsel for the State, who contended that there was no infirmity in the findings recorded by the Courts below and non-examination of the independent witnesses would not ipso facto cast any doubt or aspersion on the prosecution case if there is ample evidence to hold the petitioner guilty.

I have thoughtfully considered the rival contentions learned counsel for the parties and have gone through the record.

There is no merit in the contention of the learned counsel for the petitioner that the proceedings in the instant case stood vitiated as the trail Court followed the procedure prescribed for a warrant's case. Section 16-A, which was inserted w.e.f. 1.4.1976 and deals with the power of the Court to try cases summarily, is reproduced below:-

" **case summarily.-** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall as far as may be, apply to such trial;

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year;

Provided further that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code."

No doubt, Section 16-A provides that the offences relating to the violation of the provisions of the Act be tried in a summary manner, but if a procedure of warrant's case has been followed, then it does not necessary vitiate the entire trial unless the failure of justice or prejudice

having been caused to the accused person is shown. For this view, I draw support from the following judicial precedents:-

(i) In Gurmukh Singh Versus State of Punjab, 1972 F.A.C. 109, the Hon'ble Supreme Court held that the conviction cannot be interfered with as no prejudice was caused in a prosecution which took place before the incorporation of Section 16-A of the Act and where the Magistrate failed to adopt the procedure prescribed for warrant case by not examining prosecution witnesses before framing charge.

(ii) The Orissa High Court in M/S Razak Rice and Oil Mills Versus Bharat Narayan Patnaik, 1989 Cri.L.J. 648, has held that trial is not vitiated as no prejudice was caused to the accused in the conduct of the trial by adopting the warrant procedure.

(iii) The Rajasthan High Court in Rajendra alias Rajjan Versus State of Rajasthan, 1988(2) F.A.C. 249, took the view similar to the one expressed by the Orissa High Court.

(iv) A learned Single Judge of this Court in Ashwani Kumar Versus The State of Haryana and others, 1994(1) F.A.C. 169 held that since the change of the trial in a summary manner from the trial as a warrant case has not resulted in prejudice to the accused, it cannot be said that provisions of Section 16-A of the Act have been violated and the trial is vitiated.

(v) In Jagdish Prash Versus State of M.P., 1995(1) F.A.C. 44, the Madhya Pradesh High Court held that the trial of an

offence under the Act not in a summary way but following the procedure prescribed for trial of a warrant case and without passing an order as contemplated in the Proviso to Section 16-A of the Act is a curable irregularity and the trial is not vitiated, if the accused does not satisfy the Court that there has been failure of justice or prejudice caused to him.

The petitioner, in the instant case, has miserably failed to show any prejudice having been caused to him and, therefore, it would not be safe to hold that the whole trial stands vitiated. Consequently, the contention of the learned counsel for the petitioner is rejected.

The second contention of the learned counsel for the petitioner that since no independent witness had been examined, it would cast a doubt on the version of the prosecution, also merits rejection. Such a generalized principle as sought to be propounded by the learned counsel for the petitioner can never be accepted. A perusal of the record shows that PW-Lal Singh was joined by the Food Inspector before taking the sample of the mustard oil, but he was given up by the prosecution as having been won over by the accused (petitioner). The official, who took the sample, can, at the best, make an attempt to ensure that if an independent witness is available, he be enjoined at the time of seizure of the sample, but, by no stretch of imagination, can it be expected of him to ensure that such witness would depose honestly. Once the needful has been complied with and further in the absence of any malice or allegation of victimization, the prosecution version cannot be discarded merely because the independent witness has chosen not to support it. Therefore, this contention of the

learned counsel is repelled.

So far as the third and last contention of the learned counsel for the petitioner that affidavit Ex.PK filed by the official of the office of Local Health Authority, Gurdapsur, who had received the samples, was not verified in accordance with law and, hence, the crucial link evidence was rendered untrustworthy, is concerned, the same is of no consequence in view of the over-whelming evidence against the petitioner where taking of the sample from his shop in his presence has been proved beyond any doubt.

On the basis of the above discussion, there is no reason to interfere with the impugned judgment.

However, keeping in view the fact that the petitioner was 50 years of age at the time of recording of his statement under Section 313 of the Cr.P.C. and he would be, by now, fairly advanced in the age, as also the fact that he has faced the agony of criminal proceedings for the last more than 16-1/2 years, I am of the opinion that the sentence awarded to him deserves to be reduced to that of fine. For this view, I draw support from a judgment of the Supreme Court in Sri Krishan Gopal Sharma and another Versus Government of N.C.T. of Delhi, 1996(1) F.A.C. 258 and also from the judgments of Allahabad High Court in Bhageloo Versus State of U.P. And another, 1996(2) F.A.C. 199 and of this Court in Mahavir Versus State through Govt.Food Inspector, 2000(4) R.C.R. (Criminal) 208.

Consequently, the revision petition is disposed of in the following terms:-

(i) The conviction of the petitioner shall remain intact;

(ii) the sentence of imprisonment awarded to him is reduced to

that of fine of Rs.10,000/- which shall include the fine of Rs.1000/- already deposited by the petitioner. The fine shall be deposited with the trial Court within a period of three months from today, failing which he shall be required to serve his remaining part of the sentence as awarded by the Courts below.

July 16,2007 **(Mahesh Grover)**
"SCM" **Judge**